FILE COPY

Office - Supreme Court, U.S.
OCT 19
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

No. 277

THE AUTOMATIC DEVICES CORPORATION,
Petitioner.

vs.

SINKO TOOL & MANUFACTURING COMPANY,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO MOTION TO WITHHOLD NOTICE OF DENIAL OF PETITION FOR WRIT OF CERTIORARI.

BERNARD A. SCHROEDER,
RUSSELL WILES,
GEORGE A. CHRITTON,
141 W. Jackson,
Chicago, Ill.,
Counsel for Respondent.

CHRITTON, WILES, DAVIES, HIRSCHL & DAWSON,
Attorneys for Respondent.

THE BUNTHORP-WARREN PRINTING COMPANY, 810 WEST JACKSON, CHICAGO

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

No. 277

THE AUTOMATIC DEVICES CORPORATION,
Petitioner,

vs.

SINKO TOOL & MANUFACTURING COMPANY,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO MOTION TO WITHHOLD NOTICE OF DENIAL OF PETITION FOR WRIT OF CERTIORARI.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

On October 14, 1940 this court denied The Automatic Devices Corporation's petition for a writ of certiorari. Petitioner has moved that the official notification to the Court of Appeals for the Seventh Circuit, that the petition for writ of certiorari has been denied, be withheld for a period of twenty-five days from the entry of the order on October 14, 1940 *and such extension thereof* as may be granted by the court for filing a petition for rehearing. Respondent, Sinko Tool & Manufacturing Company, opposes such motion.

Rule 34 of this court provides:

> "Whenever application for a writ of certiorari to review a decision of any court is denied, the

clerk shall enter an order to that effect, and shall forthwith notify the court below and counsel of record."

Petitioner has not shown any reason why the usual procedure provided for by the above rule should not be followed in the present case. It merely states that two of the patents involved in the present suit are involved in an appeal to the Court of Appeals for the Second Circuit in the case of *The Automatic Devices Corporation* v. *The Cuno Engineering Corporation*, and that in the event that the Court of Appeals for the Second Circuit should reach a different decision from that of the Court of Appeals for the Seventh Circuit (and the District Court in the Second Circuit), petitioner desires an opportunity to file a petition for rehearing on the present denial by this court of the petition for a writ of certiorari.

Respondent opposes such motion because failure to notify the court below, as provided for in Rule 34 of this court, will result in a stay of the mandate of the lower court and will needlessly delay the taxation and payment of costs merely because of an extremely remote contingency that at some undetermined time in the future the Court of Appeals in another Circuit *may* reverse the decision of the District Court and disagree with the decision of the Court of Appeals for the Seventh Circuit.

The decision in the other case, *The Automatic Devices Corporation* v. *The Cuno Engineering Corporation*, was only handed down June 7, 1940 and petitioner has not stated when the case is likely to be reached for argument in the Court of Appeals for the Second Circuit. Respondent's attorney argued a case in that Court on April 17, 1940 and the case was not decided until August 6, 1940. Accordingly it is not likely that the case to which petitioner refers will not be decided until

three or four months after the date eventually set for argument.

Respondent is not fully advised as to the construction of the device involved in the suit by petitioner against The Cuno Engineering Corporation, but the devices are not identical and it is noted that the patents and claims relied upon in that suit are not entirely the same as those in the present suit.

For the above reasons, it is submitted that petitioner has shown no reason why an exception should be made to Rule 34 of this court, the effect of which would be to needlessly delay the normal and orderly procedure in the present suit.

Respectfully submitted,

BERNARD A. SCHROEDER,
RUSSELL WILES,
GEORGE A. CHRITTON,
Counsel for Respondent.

Chicago, Illinois,
October 16, 1940.

Receipt of 2 copies of the above brief is acknowledged this ..... day of October, 1940.

.....
Of Counsel for Petitioner.